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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/687,162	10/16/2003	Robert D. Harty	0006/01146	6814

27197 7590 04/09/2007
CHERSKOV & FLAYNIK
THE CIVIC OPERA BUILDING
20 NORTH WACKER DRIVE, SUITE 1447
CHICAGO, IL 60606

EXAMINER

PATEL, TAJASH D

ART UNIT	PAPER NUMBER
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3765

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	04/09/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary	Application No.	Applicant(s)	
	10/687,162	HARTY, ROBERT D.	
	Examiner	Art Unit	
	Tejash D. Patel	3765	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07 November 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,2,4,5,7-16 and 18-23 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-2, 4-5, 7-16 and 18-23 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1, 2, 4-5, 7-16, and 18-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Holmes in view of Spitler (US 5,005,374). Holmes discloses a device to protect the neck and the base of the skull while allowing unimpeded motion of the head from either side to side or front to front including a first impact resistant pliable substrate (10) being rigid, col. 1, lines 71-75 than a second integral, molded and underlaying substrate (15) made of elastomeric material, col. 2, lines 21-26. Further, straps (13) extend from the substrate having closure/securing means as shown in figures 1 and 2. Also, the device extends to a region below the seventh vertebra as shown in figure 3. However, Holmes does not show strap extending around the ventral region of the neck with the second substrate defining a cavity having means for regulating fluid.

Spitler discloses a device to protect and insulate the neck including a first outer substrate (18) with an underlying second substrate (32) defining cavities and plurality of reversible deformation thereon having means for regulating fluid, col. 3, lines 29-68 as shown in

figures 1-5. Further, the device has a strap (40) with closure means (42A) extending around the ventral region of the neck as shown in figure 1.

It would have been obvious to one skilled in the art at the time the invention was made to secure the device of Holmes with strap the extend around the ventral region of the neck as taught by Spitler as an alternative but equivalent means for fastening as known in the art. Further, it would have been obvious to substitute the second substrate of Holmes with a substrate defining a cavity with fluid therein as taught by Spitler in order to keep the wearer of the device comfortable while offering protecting from external impact as required for a particular end use thereof. Furthermore, it would have been obvious that the first and second substrates and the straps of Holmes when viewed with Spitler can be made of any material that was available at the time the device was made or as required for a particular application thereof.

The "adapted to" recitation in claims 1,13, 15, 16 and 18 has not been given patentable weight since it does not positively limit the metes and bounds of the patent protection as desired.

5. Claims 4-5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Holmes and Spitler in view of Hujar et al (US 5,557,807). Holmes discloses the invention as set forth above except for showing means of attaching the neck device to a helmet.

Hujar et al (hereinafter Hujar) discloses a helmet with cooling means having a neck protector that is integrally molded thereto as shown in figure 3.

It would have been obvious to one skilled in the art at the time the invention was made to position the neck device of Holmes when viewed with Spitler which is reversibly worn on the head as shown in figure 4 by attaching the device to a helmet as taught by Hujar, an alternative but equivalent means of securing the device about the head in order to keep the user comfortable or depending on the end user thereof.

Response to Amendment

6. The amendment and argument filed on November 7, 2006 has been considered and duly noted. In view of such, the amendment has necessitated this office action to be made FINAL and the arguments are moot.

Conclusion

7. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37

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CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

8. The prior art made of record and not relied upon is considered pertinent to Applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tejash Patel whose telephone number is (571) 272-4993.

March 30, 2007



**TEJASH PATEL
PRIMARY EXAMINER**